

FILED

July 11 2008

Ed Smith
CLERK OF THE SUPREME COURT
STATE OF MONTANA

LAKE COUNTY JUSTICE COURT
CHUCK WALL, JUSTICE OF THE PEACE

Lake County Court House
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JUL 11 2008

July 7, 2008

Ed Smith
CLERK OF THE SUPREME COURT
STATE OF MONTANA

Montana Attorneys and Judges

Re: Proposed 2008 Montana Code of Judicial Conduct

Dear Fellow Attorneys and Judges:


The Commission on the Code of Judicial Conduct was appointed by the Montana Supreme Court to propose a new Code of Judicial Conduct. Proposed Rule 3.10 would prohibit full time judges in lower courts from practicing law in other courts. This will lead to the resignation of many lower court judges with law degrees and/or prevent many attorneys for seeking such positions. The Supreme Court is accepting comments on the proposed Code up until Friday, July 11th.

I would ask that you review my letter to the Supreme Court, as well as the proposed rule as compared to the current law on the subject, which is Rule 31, Montana Canons of Judicial Conduct (all of which are enclosed herewith), and that you contact the Court immediately to oppose this proposed rule. I believe the people of Montana will suffer serious consequences if this rule is adopted.

Please contact the Court before Friday, July 11th. The entire Proposed 2008 Montana Code of Judicial Conduct is available online at www.courts.mt.gov. Then click on "Orders" at the top of the page and then go to "Proposed Rules."

Please feel free to contact me at the above telephone number with any questions or concerns. Thank you very much for your anticipated support in this matter.

Sincerely,


Chuck Wall,
Justice of the Peace

LAKE COUNTY JUSTICE COURT
CHUCK WALL, JUSTICE OF THE PEACE

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106 Fourth Avenue East
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July 1, 2008

Montana Supreme Court
Box 203003
Helena, MT 59620-3003

Re: Proposed 2008 Montana Code of Judicial Conduct

Dear Honorable Justices:

I write to express my concerns regarding Proposed 2008 Montana Code of Judicial Conduct Rule 3.10, which proposes that "A full time judge shall not practice law". Rule 31, Montana Canons of Judicial Ethics, currently allows judges in some courts of limited jurisdiction to practice law, as long as it is not done in their own courts and as long as they are "scrupulously careful to avoid conduct in [his] practice whereby [he] utilizes or seems to utilize [his] judicial position to further [his] professional success." Rule 31, Montana Canons of Judicial Ethics. The proposed Rule 3.10 would have the devastating effect of forcing many lower court judges who are licensed attorneys to resign from their position for one or several reasons, which would be detrimental to the public as well as the public's perception of the Montana court system. I strongly urge the Commission on the Code of Judicial Conduct to reconsider its current position, and to withdraw the proposal that the Supreme Court adopt a rule prohibiting lower court judges from practicing law, whether they are full-time or not. I likewise urge the Court to refrain from adopting such a proposal in the event the Commission makes such a proposal in its final draft.

When I first ran for election, the constituents of Lake County expressed shock and concern that there were judges hearing cases that had not been to law school. Many still express concern. While I do not encourage the legislature to require all judges to possess law degrees - I know many lower court judges that do not have law degrees who are very wise and learned in the law; such a requirement would leave many courts without a judge; etc. - I do feel that if an attorney is willing to accept

such a position the citizens of Montana are fortunate to have someone with a legal education on the bench.

Lake County Justice Court processes over 5,000 new cases per year. In addition to those new cases, I personally handle approximately 25,000 additional cases each year in some manner or other – issuing writs of execution, enforcing judgments, issuing warrants and dealing with those who have been arrested on both my warrants and warrants from other judges, felony initial appearances for the District Court, etc. Most of the cases that go to trial involve at least one attorney (often the County Attorney) and many have two attorneys (defense counsel, private attorneys in civil matters) that are making legal arguments on behalf of their clients. I rule on difficult motions to suppress, motions to dismiss, motions for summary judgment, objections under the Rules of Evidence, and other legal arguments that are presented on a regular basis by counsel. Having a judge with a formal legal education and a Montana bar license is especially beneficial in these cases. It often has the residual effect of preventing parties appearing pro se from being treated unfairly or bullied by parties represented by legal counsel.

In a discussion with one of the members of the Commission it was explained to me that one of the main reasons for proposed Rule 3.10 was the theory that a lower court judge should not be held to a lesser ethical standard than a district judge. While I wholeheartedly agree with that concept, proposed Rule 3.10 is not a matter of ethics. None of the cases that I handle as an attorney are a conflict of interest or unethical in any way. The majority of the cases I handle as a private attorney are representing children that are removed from their parents due to allegations of abuse and neglect under Title 41, Chapter 3, MCA, or children whose parents are going through a difficult divorce and the kids are caught in the middle. There is no conflict or ethical dilemma involved in my representing these children in District Court while acting as a justice of the peace in the Justice Court. I often give legal advice in simple, uncontested divorces and handle some real estate transactions or probate matters, all of which take place solely in the District Court. I can only assume that the other lower court judges' private practices do not involve any ethical dilemmas or conflicts with their jobs as judges.

District Judges in Montana currently receive a salary of \$99,234.00 plus benefits. I myself currently receive a salary of \$46,181.00. Many full-time judges in less populated counties make far less than that. One of the considerations I made when deciding whether or not to run for this position was whether Montana law prohibited justices of the peace from practicing law in other forums. It did not and currently does not. While my salary is no pittance for a resident of Montana, it does not come close to supporting my expenditures, including outstanding loans. I went to law school to gain the ability and license to help people, and chose to do so as a judge, although I could obviously have a more lucrative career in the private sector.

There are many attorney judges who have done the same for the good of their communities. Many will be forced to resign if proposed Rule 3.10 is adopted.

Being a Justice of the Peace or City Judge is an excellent training ground for future District Court judges, who by Montana law must be licensed attorneys. The experiences we gain on the bench in the lower courts cannot be approached by merely practicing law as an attorney. We learn the ability to see and consider both sides of each case, analyze the legal issues from a neutral and learned standpoint, treat all parties with respect and compassion, manage difficult caseloads and oversee personnel matters, and work with the various other branches of the judicial, executive and other divisions in order to assure justice to all that come before us as judges. Having this the benefit of this experience is invaluable for those that become District Judges.

Montana's lower courts are the gateway to the judicial system. Most people's first contact with the legal system occurs in a lower court. When people leave the judicial system with a perception that their cases were considered courteously, wisely, impartially, and with an understanding of the law, we all benefit. Denying the citizens of Montana the ability - if they so choose - to have a licensed attorney jurist in lower courts would be tantamount to denying them justice. Again, I do not advocate that all lower court judges should be attorneys. However, if the people want to elect an attorney to hear their cases, they should not be denied that right. I therefore strongly urge the Commission to retract or amend the proposed Rule 3.10 in order to allow full-time lower court judges to practice law if licensed to do so or, in the alternative, urge the Court not to adopt such a proposed rule.

I will close with a quote given to me by former Chief Justice Jean Turnage when I assumed the bench as Lake County Justice of the Peace in 2002, which is on a plaque on my bench for all to see: "Four things belong to a Judge: to hear courteously; to answer wisely; to consider soberly; and to decide impartially." - Socrates

Don't take that privilege away from the citizens of Montana.

Sincerely,

A handwritten signature in dark ink, appearing to read 'Chuck Wall', written in a cursive, flowing style.

Chuck Wall,
Justice of the Peace